

b. Petitioner believes his record to be in error or unjust because it contains references to his GCM which was later set aside.

c. The contested report for 1 December 1995 to 15 November 1996 (Tab A) marked Petitioner "1.0" (adverse) in block 36 ("Military Bearing/ Character"). Block 43 ("Comments on Performance") explained this adverse mark as follows:

* 36 (Military Bearing) Convicted at General Court Martial under UCMJ [Uniform Code of Military Justice] Art[icle] 92: Failure to Obey a Lawful Order. Date of conviction: 13SEPT96; Concluding Date: 15NOV96. Not recommended for retention.

In block 45 ("Promotion Recommendation - Individual"), Petitioner was marked "Significant Problems" (adverse). Block 46 ("Promotion Recommendation - Summary") showed Petitioner as the only petty officer first class marked "Significant Problems;" seven were marked "Promotable." In block 47 ("Retention") he was not recommended for retention.

d. The reporting senior who had submitted the report for 1 December 1995 to 15 November 1996 also submitted a letter-supplement dated 25 February 1997 (copy at Tab D). This document, which is not specifically addressed in Petitioner's application, modified the block 43 narrative by deleting "Not recommended for retention" and adding "Scored outstanding on last Physical Readiness Test." It also modified block 44 ("Qualifications/Achievements") to read "3rd Good Conduct Medal" rather than "4th Good Conduct Medal." This letter-supplement gave no reasons for the changes made.

e. On 27 August 1997, a supplementary GCM order announced that Petitioner's GCM had been set aside. On 8 September 1997, the reporting senior who had submitted the report for 1 December 1995 to 15 November 1996 and the letter-supplement of 25 February 1997 submitted a second letter-supplement (copy at enclosure (7) to Petitioner's application). This is the letter-supplement specifically addressed in Petitioner's application. Citing the supplementary GCM order, this letter-supplement reflected the following modifications:

Block 36: Change mark from "1.0" to "3.0."

Block 45: Change from "Significant Problems" to "Promotable."

Block 47: Change from not recommended to recommended for retention.

f. Specifically concerning the contested report for 15 November 1996 to 30 September 1997 (Tab B), Petitioner objects to the last sentence in the reporting senior's comments: "Based on his performance and attitude while assigned to MIDPAC he is recommended for retention." He states that since his GCM has been set aside, "it is unjust to have anything in [his] evaluation that will potentially reflect negatively on [his] performance or raise any questions about [his] performance."

g. In correspondence attached as enclosure (2), PERS-311, the NPC office having cognizance over Navy performance evaluations, has recommended partial relief. They recommended that the report for 1 December 1995 to 15 November 1996 be amended in accordance with both letter-supplements. They further recommended removing the entire "bullet" explaining the mark in block 36. Finally, they recommended removing both letter-supplements. They recommended against removing the report for 15 November 1996 to 30 September 1997, stating that nothing provided in the petition indicates the reporting senior abused his discretionary authority in evaluating Petitioner's performance.

h. Enclosure (3) is a memorandum from PERS-832, the NPC Enlisted Performance Branch, which states that since Petitioner's GCM was set aside, "all references to the GCM must be removed from the records."

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2) and (3), the Board finds the existence of an injustice warranting partial relief.

The Board finds that the report for 1 December 1995 to 15 November 1996 should be amended as recommended by the advisory opinion at enclosure (2). They agree with PERS-311 that although Petitioner did not request such relief expressly, the changes reflected in the letter-supplement dated 25 February 1997 should be incorporated in the report as well, and this letter-supplement should be removed as well. In this regard, they particularly note that this letter reveals the reporting senior originally recommended against Petitioner's retention. They also find that changing Petitioner's mark in block 45 requires changing block 46 accordingly.

The Board further agrees with PERS-311 in concluding that the contested report for 15 November 1996 to 30 September 1997 should stand. They disagree with Petitioner's contention that the last sentence in the comment section potentially reflects negatively on his performance or raises questions about his performance.

In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's enlisted performance evaluation report for 1 December 1995 to 15 November 1996, dated 19 November 1996 and signed by Lieutenant Commander C. M. Benson, USN, be modified as follows:

- (1) Block 36 ("Military Bearing/Character"): Change mark from "1.0" to "3.0."
- (2) Block 43 ("Comments on Performance"):

(a) Remove the following:

* 36 (Military Bearing) Convicted at General Court Martial under UCMJ Art 92: Failure to Obey a Lawful Order. Date of conviction: 13SEPT96; Concluding Date: 15NOV96. Not recommended for retention.

(b) Add the following: "Scored outstanding on last Physical Readiness Test."

(3) Block 44 ("Qualifications/Achievements"): Change from "4th Good Conduct Medal" to "3rd Good Conduct Medal."

(4) Block 45 ("Promotion Recommendation - Individual"): Change mark from "Significant Problems" to "Promotable."

(5) Block 46 ("Promotion Recommendation - Summary"):

(a) Under "Significant Problems," change from "1" to "0."

(b) Under "Promotable," change from "7" to "8."

(6) Block 47 ("Retention"): Change from "Not Recommended" to "Recommended."

b. That Petitioner's naval record be corrected further by removing the letter-supplements dated 25 February and 8 September 1997 relating to the report to be modified under recommendation a above.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.


d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

e. That the remainder of Petitioner's request be denied.

74862-47

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director

7482-99



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-311
4 April 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: EN [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual
(b) COMNAVBASE Pearl Harbor Supplementary General Court-Martial Order Number
1-97 dated 27 August 1997

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of the Evaluation Report Letter-Supplement dated 8 September 1997 and the Performance Evaluation the letter-supplement refers to (1 December 1995 to 15 November 1996), the performance evaluation for the period 15 November 1996 to 30 September 1997, and all materials related to his General Court Martial.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the performance evaluations and the letter supplement to be on file. Both reports are signed by the member acknowledging the contents of each and his right to submit a statement. The member indicated he did desire to submit a statement for the performance evaluation for the period 1 December 1995 to 15 November 1996. We have not received the member's statement and reporting senior's endorsement for the report. The member did not desire to submit a statement for the other report. Also a second letter supplement dated 25 February 1997 is on file for the same report.

b. The member feels the reports in question are unjust and in error. Reference (b) set aside and dismissed the charges against the member and restored all right and privileges.

c. The performance evaluation for the period 1 December 1995 to 15 November 1996 is a Periodic/Regular report. The first letter supplement changes block-43, first bullet by deleting the last sentence "not recommended for retention", added the following comment, "scored outstanding on last Physical Readiness Test", and changes block-44 to read "3rd Good Conduct Medal" vice 4th Good Conduct Medal". The second letter supplement changed block-36, performance trait grade from "1.0 to 3.0". block-45 member's promotion recommendation from "Significant Problems to Promotable", and block-47, member's retention recommendation from "Not Recommended to Recommended". The report is procedurally correct.

d. The second performance evaluation for the period 15 November 1996 to 30 September 1997 is a Detachment of Individual/Concurrent report. The performance report appears to be procedurally correct. The reporting senior may comment or assign grades based on performance of duty or events that occurred during the reporting period. Nothing provided in the member's petition indicate the reporting senior abused his discretionary authority in evaluating the member's performance.

e. The commendatory correspondence and other documentation concerning Petty Officer McCloud performance is noted, however, this material does not show that his performance was incorrectly evaluated.

f. Further review of the member's record revealed the performance evaluation for the periods 4 July 1995 to 30 November 1995 and 16 November 1996 to 30 September 1997 missing from his record. If the member will forward a copy of the reports we will have them placed in his digitized record.

g. Enhancement of chances for promotion is not sufficient reason to remove a performance evaluation.

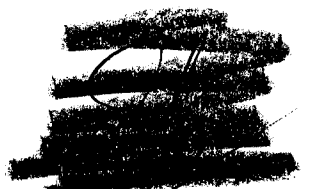
h. The member does not prove the report to be unjust or in error.

3. In view of paragraph 2.b, we recommend the following:

a. For the performance evaluation for the period 1 December 1995 to 15 November 1996 change block-36 from "1.0 to 3.0", block-43, remove the first bullet, and add the bullet, "Scored outstanding on last Physical Readiness Test", block-44 change to read "3rd Good Conduct Medal vice 4th Good Conduct Medal, block-45 change promotion recommendation from "Significant Problems to Promotable", and change block-47, retention recommendation from "not recommended to recommended".

b. Remove both letter supplements.

c. Recommend the performance evaluation for the period 15 November 1996 to 30 September 1997 remain unchanged.

A large, dark, rectangular redacted area covering the signature of the official.

Head, Performance
Evaluation Branch



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

7482-99

5420
PERS-832C
18 Apr 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS (BCNR)

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: EN1 (S[REDACTED] ID) USN, [REDACTED]

Encl: (1) BCNR File 07882-99
(2) Petitioner's Microfiche Record

1. The petition and naval records of subject petitioner have been reviewed relative to his request for removal of derogatory material.
2. The review reveals that the General Court-Martial of 13 Sep 96 was set aside on 27 Aug 97 based on OJAG decision of 18 Aug 97. Therefore, all references to that GCM must be removed from the record.

[REDACTED]
[REDACTED]
Technical Advisor to the
Head, Enlisted Performance
Branch (PERS-832)